VyStar® Credit Union

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April 6, 2009

Ms. Mary F. Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

VIA E-Mail – regcomments@ncua.gov

RE: Comments on Advanced Notice of Proposed Rulemaking (ANPR) for Part 704

Dear Ms. Rupp:

We appreciate the opportunity to provide comments on the above referenced Advanced Notice of Proposed Rulemaking (ANPR) for Part 704. The following comments are provided on behalf of the Officials and Senior Management of VyStar Credit Union, headquartered in Jacksonville, Florida. We are a state chartered, federally insured credit union which serves almost 350,000 members with assets of over $3.8 billion. Anyone living or working in fifteen counties in Northeast Florida may join VyStar, which is the largest state chartered credit union in Florida. As a matter of information we are members of five corporate credit unions and in recent years have used them primarily for payment and settlement services and for short term investments (overnight funds).

COMMENTS ON NCUA'S CORPORATE CREDIT UNION STABLIZATION PLAN

Prior to commenting on the ANPR we would like to provide the following comments about NCUA's Corporate Credit Union Stabilization Plan:

After reviewing the information NCUA provided about U.S. Central Corporate Credit Union and the situation that mandated some action be taken to keep it from moving into insolvency, we concurred that NCUA needed to take some steps to stabilize U.S. Central Corporate Credit Union. Some actions were required in order to shield the rest of the credit union movement from the subsequent fallout to the entire movement had U.S. Central failed. We had concerns with some the corporate credit unions' increasing unrealized losses, along with their insufficiency of capital and income to continue operating soundly had they needed to liquidate some of their investments and recognize significant losses. We had seldom used our corporate credit unions for long term investing for several years because we could obtain better investment options elsewhere. However, we had used various corporate credit unions for payment and settlement processing and for short term investments. As their financial situations worsened, we moved most of our overnight funds to other financial institutions.

While we concur that NCUA needed to take some actions, we remain concerned with the impact that the significant write-down and assessment will have on natural person credit unions. Our concerns have increased substantially as a result of NCUA's recent announcement that it has taken U.S. Central and Wescorp into conservatorship and that the write-down will now be 69 basis points rather then the originally estimated 51 basis points. This is made even worse by the fact that many federally insured credit unions that have membership and paid in capital in various corporate credit unions will also have to write-off part or all of that capital.

This stabilization plan will cause a majority of natural person credit unions to experience negative net income for either 2008 or 2009, and possibly both years. For example, our total write-down and assessment was originally estimated at $18.7 million. Because of this new estimate, combined with our needing to write-off almost $6 million of our almost $7.5 million in capital at two of the corporate credit unions of which are members, our total cost for this assessment is now almost $30 million. After consulting with our Certified Public Accountant, we restated earnings and recognized these expenses in 2008. This caused us to shift from making net income of over $18.7 million to having a net loss of over $9.7 million for the year. These actions will cause our net worth ratio to decline to 8.28%. And while this ratio is still well above the 7.00% level required to be considered well capitalized, we will no longer have that portion of our hard earned net worth to help us weather this deep, and what we expect to be protracted recession.

When these write-downs and assessments are made public, consumers will have less confidence in their credit unions. Members are already facing numerous forms of stress brought on by the worsening economy. They have considered their credit unions a source of strength and a safe haven during this crisis. Most members and credit union employees do not have a clear understanding of what corporate credit unions are and certainly, not why natural person credit unions must help pay for problems created at corporate credit unions. This entire matter stands to cause serious damage to the public perception of credit unions at a time when credit unions need to be a source of help for their members.

SEEKING ALTERNATIVES TO THE WRITE-DOWN AND ASSESSMENT

We strongly urge NCUA to continue seeking alternatives to the write-down and the assessment and to enact them as quickly as possible to help preserve the confidence that consumers have in their credit unions.

Alternatives that we most strongly suggest include:

Seek authority to enable corporate credit unions to borrow directly from the Central Liquidity Fund (CLF) and to be able to use those funds as capital.

Lobby the Federal Accounting Standards Board (FASB) and/or Congress for relief on "mark to market" accounting. Many of the problems we are dealing with stem from accounting rules and relate to projecting today what the investments in question will be valued at when they mature in future years. As we all know, there is no realistic means to predict the future value of any investment.

Implement temporary "regulatory accounting principles" (RAP) that would allow U.S. Central and other corporate credit unions to temporarily operate with capital below Generally Accepted Accounting Principles (GAAP) but within RAP standards that would account for the reasonable value of mortgage backed investments during the current market conditions.

Spread premium costs that restore the National Credit Union Share Insurance Fund (NCUSIF) equity to over 1.00% of insured shares over a period of years. We understand that under the Federal Credit Union Act NCUA already has this authority and does not need approval from Congress or the Treasury to take this action. It would at least provide some relief to extend a portion of this assessment, that amount over 1.00% up to the planned 1.30%, over a longer period of time. Any relief NCUA can provide credit unions should be taken.

Seek the use of Troubled Asset Relief Program (TARP) funds. While we prefer to not use TARP funds and believe that most credit unions do not want to use them unless absolutely no other alternatives are left, we believe that NCUA should seek an allocation of TARP funds as a final backstop if they are ever needed. None of us can predict how deep losses might become for the credit union movement, both at natural person credit unions and corporate credit unions, as the future unfolds.

Request Congressional approval to enable NCUA to allow credit unions to spread this assessment out for a longer period of time than one year, preferably at least the same amount of time that the Federal Deposit Insurance Corporation (FDIC) is allowed to let banks spread out their assessments. We understand that to be seven years based upon recent actions by the FDIC.

Any relief NCUA can provide regarding this write-down and assessment will be greatly appreciated by the entire credit union movement.

COMMENTS ON THE ANPR

We offer the following comments on the ANPR:

Services

We believe that corporate credit unions offer a valuable source of payment systems and settlement services for the credit union movement, regardless of the size of the credit union. This alternative to systems outside the credit union movement should be preserved. Corporate credit unions have provided efficient payment systems and settlement services for many years.

Payment systems are the movement of transactions and paper among financial institutions. That is a service that is provided by a number of providers, both within and outside the corporate credit union network.

Settlement is the actual movement of funds and requires a financial institution, routing number, etc. While payments can be separated from settlement, there are efficiencies for the two to be provided in tandem. Corporate credit unions are a valuable source of settlement services for credit unions. Without them, credit unions would be forced to utilize other financial service providers such as banks and the Federal Reserve, often at higher costs. We do not think that the goal of the Federal Reserve is to provide settlement services for almost 8000 credit unions, particularly ones that are small.

Corporate credit unions also provide valuable short term liquidity and investments for credit unions, typically for terms less than one year.

We recommend that corporate credit unions continue providing payment systems, settlement services and short term liquidity and investment needs for credit unions.

Long Term Investments

However, we do not believe that corporate credit unions need to continue to provide long term investments for credit unions. We recognize that this will hamper the ability for corporate credit unions to generate higher yields on investments. However, we recall that historically, when there have been problems within the corporate credit union system, those problems have related to the types of investments in which some corporate credit unions have engaged. Considering this most recent event, this is the third time in the past several years that corporate credit unions have experienced problems because of investments they have made. While we never like to dictate a restriction on what another entity can invest in, it appears that the benefit of engaging in riskier investments allowed under Rule 704, Part B is not providing sufficient increased value to allow corporate credit unions to continue those practices. Actually, the risk, at least in this instance is creating serious negative impact to the entire credit union system. Thus, we recommend that Rule 704, Part B be revised or deleted such that corporate credit unions no longer have special investment authorities.

We recommend that corporate credit unions be unable to make any investments not allowed to be made by natural person credit unions, either federally or state chartered. We mention state chartered credit unions since some states allow state chartered credit unions to make investments such as corporate bonds that federally chartered credit unions are not allowed to make. NCUA may need to revise Rule 703 to enhance the investment abilities for federally chartered credit unions.

Also, concentration risk is another factor that should be considered as it relates to corporate credit unions. From what we understand, a predominate issue for U. S. Central and a few other corporate credit unions is the significant concentrations they hold in certain riskier types of investments. Appropriate tools should be used to assess the risks and manage such risks.

Structure

If the focus of corporate credit unions becomes predominately payments systems, settlement services and providing short term liquidity and investments, we do not think the present two tier corporate credit union system will need to exist as it does today. We do not have a recommendation of exactly what that structure should look like but we believe that less corporate credit unions would be needed. We have in total 28 corporate credit unions today and a substantially smaller number should be able to serve the credit union movement effectively if their focus is payment systems, settlement services and short term liquidity and investments. As restructuring occurs, we recognize that sufficient numbers of corporate credit unions are needed to ensure they can aggregate volumes of transactions, achieve economies of scale and remain an active and viable player in the financial world. At the same time, we would hope the future structure would continue to encourage innovation. If there was only one corporate credit union, we would run the risk of single point of failure and a lack of innovation. Thus, we believe the system can effectively operate with fewer corporate credit unions and a single tier.

Today, corporate credit unions provide high quality payment systems and settlement services and at times have been ahead of their counterpart banking entities, with the processing and clearing of checks, image capture, etc. By no means would we want to make changes that would hinder those types of valuable technology improvements. We believe that the corporate credit unions themselves will over time determine the most appropriate number of corporate credit unions through consolidation, without the need for NCUA or the credit union movement to dictate the exact number. Some consolidation has already occurred since the number of corporate credit unions has already consolidated from over 40 several years ago to 28 today.

Capital

Corporate Credit Unions need to have adequate levels of capital to ensure they can operate well in all environments and such that they do not create the type of undue risk that is currently being experienced within the credit union movement. If the services of corporate credit unions are limited as noted above and corporate credit unions no longer can make the type of higher risk investments that have caused problems for them recently and during prior events, their need for higher levels of capital should not exist. However, if they continue to be able to make the higher risk investments, they need some form of risk based capital. Natural person credit unions should be required to maintain contributed capital in the corporate credit unions they choose to use. If a natural person credit union is required to have a capital level of six percent to be considered adequately capitalized, it might make sense that a corporate credit union that provides payment systems, settlement services and short term liquidity and investments be required to have at least six percent capital as well to be considered adequately capitalized. If corporate credit unions are allowed to continue to engage in riskier investments they should be required to maintain higher levels of capital, perhaps some form of risk based capital such as identified in Basel II. We do not feel that we have sufficient information to provide a reasonable suggestion of exactly what levels of capital a corporate credit union should have; we simply recognize that today, the corporate credit unions engaging in the riskier investments have not been operating with sufficient levels of capital.

Field of Membership

Corporate credit unions should retain their national fields of membership. That would enable natural person credit unions to decide which corporate credit union best meets their needs. And if the natural person credit union is required to have some form of contributed capital in their corporate credit union, they should evaluate which corporate is best suited to their needs and monitor their performance. There has been some concern that the national field of membership contributed to the risk taking that some corporate credit unions engaged in as they competed for deposits and growth. However, if corporate credit unions focus on payment systems, settlement services and short term liquidity and investments, rather than providing long term and sometimes riskier investment services, their competition should be of a more healthy nature that would not place undue risk on the entire credit union movement. Some form of competition is always healthy.

Governance

Corporate credit unions should be governed by representatives from the natural person credit unions that utilize them. However, we recognize that they might have the need to bring in board members with certain types of expertise, especially if they were to continue engaging in some of the current investment activities permitted in Rule 704, Part B. We are comfortable that some small percentage of board members could be "non-members" and that they could be paid a reasonable stipend for their expertise, in order to attract qualified representation. If so, any compensation provided should be transparent to their member credit unions. If "non-member" directors are allowed, NCUA should provide some guidance and oversight as to how such "non-member" board members are selected and their expertise quantified, and compensated.

NCUA is also encouraged to do what is necessary to attract and retain qualified personnel to enable it to provide suitable oversight to corporate credit unions for the products and services they provide their members. We have worried that there was insufficient oversight, especially as related to the concentration risks in certain investments at both the corporate credit unions and from the regulators, which compounded the problems we are presently experiencing. These are certainly historic times and hindsight is wonderful but we remain concerned that there was a lack of expertise at both the corporate credit union level and at the regulatory level to help everyone fully evaluate the risks being taken. We recognize that the rapid meltdown of the housing market could not have been easily predicted by anyone or any entity and it created incredible challenges for adequate risk management and oversight. We support NCUA in attracting and retaining experienced personnel to ensure it can adequately provide necessary risk management guidance and oversight.

We greatly appreciate the opportunity to comment on NCUA's ANPR, and as noted earlier look forward to any relief NCUA can provide regarding the write-down and assessment as related to the NCUSIF.

Sincerely,

George R. Berry
Chairman of the Board
VyStar Credit Union

Terry R. West
President/CEO
VyStar Credit Union